UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1298
6 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1298th MEETING

Held at Headquarters, New York,
on Thursday, 24 March 1994, at 10 a.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant

Third periodic report of Costa Rica

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference Services, room DC2-794, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic report of Costa Rica (CCPR/C/70/Add.4)

1. At the invitation of the Chairman, Mr. Segura and Mrs. Castro de Barish (Costa Rica) took places at the Committee table.

2. Mr. SEGURA (Costa Rica) said that for Costa Rica, the first country to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the submission of its third periodic report (CCPR/C/70/Add.4) was a confirmation of its ongoing interest in the cause of human rights. Since the submission of the second periodic report, a number of important changes had taken place, among them the establishment of the Office for the Protection of Citizens. While acknowledging that the third report did not follow the guidelines established by the Committee, he expressed the hope that it could serve as the basis for a fruitful dialogue with the Committee and that his delegation could supply any additional information required.

3. The CHAIRMAN said that section I of the list of issues concerning the third periodic report of Costa Rica referred to the constitutional and legal framework within which the Covenant was implemented, as well as non-discrimination and equality of the sexes. Paragraph (a) inquired about measures taken since the consideration of the second periodic report to disseminate information on the rights recognized in the Covenant and on the first Optional Protocol, and to disseminate information on the third periodic report, and the extent to which the public had been made aware of its examination by the Human Rights Committee. Paragraph (b) requested clarification of the relationships between the General Office for the Protection of Human Rights and its subordinate offices vis-à-vis the ordinary courts, in so far as the implementation of the Covenant was concerned. Paragraph (c) sought information on any specific factors or difficulties affecting the implementation of the Covenant. Paragraph (d) sought further information on the activities undertaken by the Office for the Protection of Women and the steps taken to ensure sufficient resources to allow it to discharge its functions effectively.

4. Mr. SEGURA (Costa Rica), responding to the issues raised in section I (a), said that the most important development since the submission of the second periodic report had been the establishment of the Office for the Protection of Citizens. Its purpose was to ensure respect for citizens' rights by agencies and authorities in the public sector. The Protector of Citizens was a member of the legislative branch and had full independence of operation, administration and opinion. The Office was competent to initiate proceedings ex officio or upon request, and to conduct investigations to discover the facts concerning complaints, requests or reports it had received regarding administrative activities of the public sector. It had no competence to intervene in electoral matters. The Office could conduct surprise inspections of offices, and request all information and documentation necessary for the fulfilment of its duties. It could legally enforce summonses to citizens to appear before it. If the

(Mr. Segura, Costa Rica)

Office became aware of an administrative inequality for which any organ of the judicial branch was responsible, it could so inform the Supreme Court of Justice or the judicial inspector's office.

5. When the Office for the Protection of Citizens became aware of an illegal or unfair act on the part of a public agency, it was required to inform that agency and recommend corrective action. If the matter could be considered criminal, however, it was required to report it to the Public Prosecutor's Office. Failure to respond to its recommendations could result in a fine against the official committing the violation or, after repeated violations, a recommendation of suspension or termination.

6. Anyone could have recourse to the Office. Its services were provided free of charge, and reports could be filed either orally or in writing. Complainants were required to provide only their name and address. The Protector must take action within one year in most cases, but could extend the time-limit if necessary. Complaints lodged with the Office had no effect on administrative or judicial deadlines, and the Office could not consider a complaint where legal action was pending, although it could pursue its own informal investigation.

7. Public agencies were required to cooperate with the Office in its investigations and to provide any assistance necessary. A public official's refusal to provide documentation or information to the Office could result in disciplinary action.

8. The Office established and maintained communication with various public and private human rights organizations, both national and international. It had special branches dealing with questions related to women; children and minors' quality of life and environment; public service and local government; social services; justice and police; and administration, finance and economics. Each branch had its own Protector to coordinate the specialized area, who would be provided with the resources required.

9. Another important aspect of the Office for the Protection of Citizens was the appointment of a "Protector-at-large" ("Defensor Itinerante"), whose function was to help citizens to submit reports and complaints, and conduct investigations on matters concerning their rights. His duties involved travelling around the country to receive direct reports concerning complaints and claims, and to provide information on the submission process. The Protector-at-large also clarified the competence of the Office in respect of various complaints and reports, and acted on behalf of the Protector when necessary. He could initiate proceedings ex officio when violations of the rights and interests of citizens were noted. When complaints did not fall within the competence of the Office, he informed citizens of the authority or agency they should contact. If a complaint was declared inadmissible, he would so inform the complainant and explain the reasons for denial. He was also responsible for compiling the available information on matters to be brought before the Office. He could inspect offices and visit officials to request information, and could attempt to find immediate solutions to problems wherever possible. He was also required to draft reports for studies requested by the various special branches, and to submit monthly reports to the coordinators of the special branches.

(Mr. Segura, Costa Rica)

10. In addition, a network of regional offices were empowered to act on behalf of the "Protector" in various locations around the country. Those offices could transmit the particulars of a complaint to a public official on behalf of the Protector. They communicated with the coordinators regarding investigations that should be brought to the attention of the special branches and verified compliance with the recommendations of the Office for the Protection of Citizens by the public agencies in question.

11. The Office also worked to promote and disseminate information on the rights and responsibilities of citizens, including mechanisms for the protection of human rights. It published all types of material, and provided information on the activities of the Office through the mass media. It held training programmes for public officials and was working to include the study of human rights in both public and private education. It coordinated the relationship between the Office and the communications media, and supervised the production of an annual report. In addition, it maintained a human rights documentation centre with an extensive bibliography and database.

12. The Office for the Protection of Citizens represented an important step forward. Certainly, improvements could be made in some areas of the Costa Rican legal system. Through the daily operation of the Office, such areas would no doubt come to light.

13. The CHAIRMAN inquired whether any specific action had been taken to disseminate the third periodic report.

14. Mr. SEGURA (Costa Rica) said that the report had been drafted by a special office of the Ministry of Foreign Affairs, which had gathered information from various other ministries, particularly the Ministry of Justice and Pardons, municipal governments, the Supreme Court of Justice, the General Office for the Protection of Human Rights, and non-governmental organizations. The news media and the Ministry of Justice and Pardons had been informed of the date when the report would be submitted to the Human Rights Committee. One of the faults of the system lay in the fact that there was no open channel of communication between non-governmental organizations and the Ministry of Foreign Affairs.

15. As to section I (b) of the list of issues, he noted that he had clarified the relationships in his preceding remarks concerning the Office for the Protection of Citizens.

16. Turning to section I (c), he said that in implementing the Covenant, his country faced economic difficulties, institutional difficulties and legal difficulties in terms of adapting its legislation to reality. Article 3 of the Covenant, in particular, posed problems, since despite legislation providing for formal equality between men and women, women were not fully able to exercise their civil and political rights. For instance, of the 34 members of the new Cabinet which was to take office on 8 May, only four were women. The Office for the Protection of Citizens had appealed to the President-elect to enforce Act No. 7142 on the Promotion of Social Equality for Women, which required that 50 per cent of government posts should be occupied by women.

(Mr. Segura, Costa Rica)

17. Other problems related to the implementation of article 7, which protected prisoners against abuses of authority. Despite an intensive public-information campaign designed to prevent such abuses, they persisted, since the authorities could not always control the actions of the security forces. A commission of inquiry was being formed to investigate such incidents, identify the perpetrators and bring them to justice.

18. His Government, aware that that was an issue of relevance to all countries, had proposed that a working group should be established to consider the elaboration of an optional protocol to the Covenant on that subject. The main task of a such a group would be to visit prisons and detention centres in as many countries as possible in order to gather data. In Costa Rica, a working group had been engaged for the past two years in preparing an initial draft of such a protocol.

19. A further difficulty had to do with the attitude prevailing in some sectors that, in view of its outstanding record in defending and promoting human rights, Costa Rica did not need to make any improvements in its institutions or policies. A wide-ranging public education campaign was needed in order to convince the public that human rights must be monitored and defended on an ongoing basis.

20. With regard to section I (d) of the list, he said that the Office for the Protection of Women had been established under Act No. 7142 of 8 March 1990, which incorporated a number of international women's rights instruments, especially the Convention on the Elimination of All Forms of Discrimination against Women.

21. In the international context, his country had made contributions in that area to the World Conference on Human Rights, notably by proposing that the Vienna Declaration adopted at that Conference should condemn gender-based violence.

22. In the Central American context, the Office for the Protection of Women was in the vanguard in terms of recognizing and promoting awareness of the special discrimination faced by women. In the past three years, the Office had focused on providing equal access for women to public office. It also served as a focal point for complaints against government administrative offices, and provided women with advice and information on a number of topics, including domestic violence, violations of basic rights, discrimination in respect of family-support agreements, disputes between parents and children, and labour disputes. In 1992, 3,000 women had sought help from the Office; out of a sample consisting of 573 cases, 62.47 per cent had involved problems relating to domestic violence and 6.45 per cent had dealt with problems relating to the collection of support payments.

23. Mr. PRADO VALLEJO said that the Committee had had a constructive dialogue with the Government during the consideration of its two previous reports. With its long tradition of stable and democratic institutions, Costa Rica was a model for large and small countries alike. He appreciated the Costa Rican representative's admission that the third report (CCPR/C/70/Add.4) had not been drafted in accordance with the Committee's guidelines, in that it did not list

(Mr. Prado Vallejo)

the articles of the Covenant and detail the situation with regard to their implementation. The Committee needed to know what obstacles remained to full implementation.

24. On the other hand, the report contained important information on the new institutions for the protection of human rights. Further details should be provided on how those bodies functioned and what steps were taken to investigate complaints of human rights violations. Furthermore, it was unclear whether the Protection Offices could function independently, since, as stated in paragraph 7 of the report, they operated within the Ministry of Justice and Pardons. It would also be useful to have a full account of how the Government had handled a recent, well-publicized complaint made by Amnesty International.

25. He failed to understand why the report had not been disseminated to the media. State party reports should be disseminated widely so that all sectors of the population would be aware of their rights.

26. Article 75 of the Constitution, which described Roman Catholicism as the State religion and provided that the State should contribute to its maintenance, needed clarification. While that provision did not openly discriminate against other religious beliefs, it did confer a privileged status on one religion; he wondered whether there was any movement in Costa Rica calling for the amendment of that article in the interests of guaranteeing religious freedom.

27. Similarly, according to a report which he had received from the Costa Rican Human Rights Commission, article 34 of the regulations implementing the Act on the Teaching Profession provided for religious instruction in the public schools, and also required teachers of religion to have prior approval from the National Conference of Bishops. Thus, Catholic teachers were accorded a special status, and it was unclear whether teachers who professed other religions would be authorized to teach religion. The Government should indicate whether any demands had been raised in the country for the amendment of that provision.

28. Lastly, he drew attention to paragraph 215 (f) of the report, which stated that actions of unconstitutionality could be brought against inertia of and omissions and abstentions by public authorities; he requested the Government to explain what an action against inertia consisted of.

29. Mrs. EVATT said that she was disappointed with the report, which did not address the concern expressed by the members of the Committee during the consideration of the previous report at the Government's failure to meet the preparation guidelines. The current report provided information on government programmes, but failed to link them to specific articles of the Covenant. On the other hand, it also provided valuable information on the Constitutional Court, the remedies of amparo and habeas corpus and the Supreme Electoral Tribunal.

30. Referring to section I of the list of issues, she said that the Committee had formerly expressed concern with regard to the question of women's equality; unfortunately, the report provided little practical information in that area. She noted from the report which the Government had submitted to the Committee on the Elimination of Racial Discrimination that there was a specific provision

(Mrs. Evatt)

requiring political parties and other organizations to secure equal participation for women; it would be useful to have details on the effect of that provision. She also stressed the importance of involving the Costa Rican community in the preparation of reports so that individuals and non-governmental organizations could assist the Committee in considering it.

31. Mrs. HIGGINS said that the second periodic report of Costa Rica had already evidenced a mismatch between its contents and the reality in the country; the third periodic report was still worse. The Committee's guidelines had clearly not been adhered to. Although paragraph 1 of the report suggested that it would clarify points raised earlier by the Committee, in fact the text failed to do so. Many articles of the Covenant were not reflected in any way. While she appreciated the dialogue with the representatives sent by Costa Rica, it would have been preferable to have heard from a representative of a government department responsible for human rights issues. The absence of such a representative was all the more unfortunate given the inadequacies of the report. Further, there was no evidence that the report had been disseminated in the country or that the media had been informed.

32. The whole approach suggested either contempt or the feeling that Costa Rica could rest on its laurels. It was clearly not good enough for representatives to admit that a report was inadequate; the Committee wanted a response to the points it had raised.

33. Mr. MAVROMMATIS said that Costa Rica had made an admirable contribution to human rights, so that it was all the more regrettable that the report before the Committee did not provide a real picture of the human rights situation in the country. At a time of increased strain on human rights, the submission of such an unstructured report was simply not acceptable. Much of the information actually provided could have been condensed into a much smaller space.

34. There appeared to be a proliferation of human rights organs in Costa Rica. He would welcome information on the respective areas of competence of the General Office for the Protection of Human Rights, and its subordinate offices, and the Office for the Protection of Citizens, and an indication of why the latter Office had been needed, given the recent establishment of the other human rights offices referred to in the report.

35. It had been difficult for Committee members to obtain information directly from non-governmental organizations within Costa Rica, presumably because the report had not been made available to them. Nevertheless, he noted that Costa Rica still provided a good example in terms of protecting human rights.

36. Mrs. CHANET said it was quite clear that the report did not meet the Committee's needs, which was particularly unfortunate given the political will to protect human rights that was evident in Costa Rica. The report did not enable the Committee to evaluate changes in the human rights situation during the interval between the submission of the second and third periodic reports, and the report before the Committee did not reflect the articles of the Covenant or explain how they were implemented. It seemed that non-governmental organizations had not had the report made available to them. She wished to know whether there were any plans to change that situation.

(Mrs. Chanet)

37. Regarding the statement in paragraph 54 that the Office for the Protection of Human Rights enjoyed independence in technical matters, she asked whether that was also true of its relationship vis-à-vis the courts, and whether it could seize a court directly in the event of a violation.

38. She noted that the Constitutional Court had only recently been established, and asked what its competence was and what decisions had been taken in respect of the application of international human rights instruments. She also requested clarification of the statement in paragraph 174 that the Constitutional Court had the power to order the release of persons in some circumstances. Lastly, in terms of offering guarantees for the rights protected under the Covenant, she asked what the allocation of responsibilities was between the Constitutional Court and other courts, including the proposed court of cassation.

39. Mr. EL-SHAFEI said that Costa Rica had a very positive human rights image, both in terms of relations between the authorities and the population, and internationally. It was accordingly all the more disappointing that the current report had not taken into account the comments made by the Committee in its consideration of the second periodic report. The structure of the current report did not follow the Committee's guidelines, and the report did not provide much information.

40. He asked how the General Office for the Protection of Human Rights was constituted, whether its officials were elected or appointed, and how their independence was assured. He requested information on the Assembly of Protectors referred to in the report, as well as on the Office for the Protection of Citizens. He also wished to know whether the General Office for the Protection of Human Rights submitted reports to Parliament, and exactly how it monitored the protection of human rights.

41. The precise relationship between the various human rights offices and the courts required clarification. Lastly, he asked what efforts were being made to disseminate the Covenant in Costa Rica.

42. Mr. BRUNI CELLI agreed that the Committee's guidelines had not been met by the report, which should have covered developments in the implementation of the Covenant since the second periodic report. Nevertheless the report did contain valuable information.

43. He welcomed the establishment of the General Office for the Protection of Human Rights, and wondered how successful the various subordinate offices of the General Office had been in the view of the Government, and what difficulties had been encountered. In particular, the relationship between the new offices and government departments, and the use made by the population of the new offices, were not clear. He noted the comment in paragraph 83 that the Office for the Protection of Women lacked adequate staff, and asked what impact that had had on its operations and effectiveness, and whether other human rights offices were also affected. Lastly, he noted that information on the role played by the human rights offices and their relationship with the Government and the courts would be welcome.

44. Mr. HERNDL said he agreed with the comments of other members of the Committee regarding the inadequacy and confusing nature of the report (CCPR/C/70/Add.4). Moreover, the report seemed to concentrate on organizational matters while providing no detailed information on the actual human rights situation in Costa Rica, including the legal aspects of that situation. He also agreed with the criticism by members of the Committee of the apparent failure to make the report available for comment by non-governmental organizations in Costa Rica.

45. Turning to specific questions raised by the report, he asked what were the role and tasks of the General Office for the Protection of Human Rights referred to in paragraph 6 and the Assembly of Protectors referred to in paragraph 9, and how the work of the General Office related to civil responsibility. He also asked for more information on how the Office for the Protection of Human Rights helped prisoners to exercise their right to vote, as referred to in paragraph 56 (e), and on whether the overriding authority of treaties over internal laws applied to the Covenant as well as to the American Convention on Human Rights.

46. Mr. POCAR said that he agreed with the criticisms of the report already made by other members of the Committee. The report's inadequacies were particularly regrettable in view of Costa Rica's exemplary record with respect to human rights, and because much of the information on admirable new developments with regard to human rights in Costa Rica presented in the report could constitute the basis for a report which was in accordance with the guidelines laid down by the Committee.

47. Turning to matters of detail, he asked for clarification of the relationship between the Office for the Protection of Children referred to in paragraph 145 and the administrative and judicial authorities referred to in paragraph 146. Noting that, during the Committee's examination of Costa Rica's previous report, the Costa Rican representative had stated that the authorities had asked non-governmental organizations for assistance in the preparation of the report, he asked whether that had been done in the case of the present report.

48. Mr. SADI said it was because Costa Rica was a beacon of human rights that the report before the Committee was particularly disappointing. He was sure that the report's deficiencies and lacunae were unintentional; nevertheless they existed. For example, paragraph 4 referred to action taken when rights were violated. What action was meant, specifically, and what happened after the General Office for the Protection of Human Rights investigated such abuses?

49. On the question of dissemination of the report so as to enable non-governmental and other organizations to see and perhaps contribute to it, he said that although dissemination was not specifically called for by article 40 of the Covenant, the jurisprudence of the Committee made it necessary.

50. Mr. SEGURA (Costa Rica), replying to some of the general comments made by Committee members, noted that the report had been prepared at a time when Costa Rica had been participating actively in preparations for the World Conference on Human Rights as well as a regional conference on human rights; the officials

(Mr. Segura, Costa Rica)

involved had perhaps been too busy to give the report the attention it required. In the light of Costa Rica's human rights record and its active participation in the work of the United Nations in that field, its attitude towards the Committee could certainly not be regarded as contemptuous. The lack of detailed information regarding the operation of the Office for the Protection of Citizens, which constituted the major new development dealt with in the report, was due to the fact that the Office had been established in November 1993, only three months before the deadline for submission of the report to the Committee and just a couple of months before the session of the Commission on Human Rights.

51. On the question of the publicity given to the report within Costa Rica, he pointed out that the report had been in preparation within the Ministry of Foreign Affairs throughout 1993 and could have been consulted by anyone interested throughout that period; there were no grounds for the suggestion that the report had somehow been kept secret. It was true that the report had not been published, but that was for reasons of economy. The Government's general procedure with regard to such reports was to announce that they would be submitted to the United Nations, after which anyone was free to consult and comment on them.

52. He would reply to the more specific questions of members of the Committee at a later meeting.

The meeting rose at 1 p.m.

UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1299
4 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1299th MEETING

Held at Headquarters, New York,
on Thursday, 24 March 1994, at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Costa Rica (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference Services, room DC2-794, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Costa Rica (continued) (CCPR/C/70/Add.4)

1. At the invitation of the Chairman, Mr. Segura and Mr. Tattenbach (Costa Rica), took places at the Committee table.

2. The CHAIRMAN said that the Costa Rican delegation would proceed to answer questions held over from sections I, II and III of the list of issues.

3. Mr. SEGURA (Costa Rica) said that, because of financial difficulties, no one from the Ministry of Justice had been able to come to New York to reply to the Committee's questions. Replying to a question raised by Mr. Mavrommatis concerning the proliferation of Offices for the protection of various rights and conflicts of competence of such Offices, he said that there were no conflicts of competence as the Office for the Protection of Citizens, which dealt with all human rights matters, reported to the Legislative Assembly while the Ministry of Justice, which also had a human rights branch, reported to the Executive. With respect to Mr. Herndl's question on the functions of each Office, he felt that he had already answered that question at the previous meeting. Concerning Mr. Prado Vallejo's question on the issue of unconstitutionality in paragraph 215 of the report, as far as he knew, an action of unconstitutionality could not be brought against inertia of and omissions and abstentions by public authorities; an error had probably been made. The issue would be addressed in the next periodic report. Concerning the amendments made to article 48 of the Constitution, he noted that the result of such amendments had been to ensure that international treaties and other instruments in the area of human rights were on a par with the country's constitutional provisions.

4. Turning to the question of how the work of the different human rights protection offices was evaluated, he said that monthly analyses were carried out and were submitted in the form of a public report during the first few days of each month to each human rights protection office. The reports included analyses of admissible cases, public complaints about services, interviews of public officials and comments of medical doctors. They did not include cases that had not yet been settled or those which any interested party had asked should be kept confidential.

5. With regard to the question as to whether the Covenant was at the same level as the Inter-American Convention on Human Rights, he noted that it had the same ranking.

6. Concerning the abolition of the death penalty (sect. II (a) of the list of issues), he said that Costa Rica had not yet ratified the Second Optional Protocol to the Covenant because the legislative procedures were extremely complicated and all international treaties and agreements were usually dealt with last on the legislative agenda. Concerning the rules and regulations governing the use of weapons by the police and security forces (sect. II (b)), he said that Executive Decree No. 3378-G of the Ministry of Justice established very strict regulations on the use of weapons by the police and security forces

(Mr. Segura, Costa Rica)

personnel. Moreover, both the Ministry of the Interior and the Ministry of Public Security regularly organized courses on human rights with special emphasis on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Agents of the Ministry of Public Security were required to report weekly on the amount, type and condition of weapons in their possession and possession of weapons and ammunition by private individuals was also regulated. Unfortunately, the regulations pertaining to the use of firearms by members of the police and security forces had, on occasion, been violated. Such violations were investigated by the relevant ministry and offenders were punished. Very serious cases were immediately brought before the courts.

7. Concerning torture, inhuman or degrading treatment or punishment (sect. II (c) of the list of issues) he said that there had been complaints of torture and degrading treatment, and that the individuals involved had been brought before the courts. As for specific measures taken by the authorities to ensure the strictest observance of article 7 of the Covenant (sect. II (d)), he said that article 127 of the Penal Code strictly prohibited the use of torture, cruel, inhuman or degrading treatment. It was also forbidden to subject people to medical and scientific experiments without their consent. In December 1993 Costa Rica had ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Concerning section II (e), he said that, under article 40 of the Constitution, any statement obtained by means of force was null and void, thus, any confession or testimony obtained under duress could not be used in court proceedings. Turning to section II (f) of the list of issues, he indicated that, under the provisions of articles 197 and 164 of the Penal Code and 44 of the Constitution, a person could not be held incommunicado for more than 48 hours without a court order, such detention could be extended only up to a maximum of 10 consecutive days and in no case did it preclude judicial inspection.

8. Mr. BRUNI CELLI asked, with respect to section II (a), whether the Committee could infer from the fact that the executive had sent a bill to the Legislative Assembly for ratification of the second optional protocol of the Covenant that the Executive did indeed have plans to ratify that protocol. Concerning section II (b), he wondered whether the Government had encountered any specific problems in registering the weapons that had been brought into Costa Rica after the civil war in Nicaragua or whether many of those weapons brought in clandestinely were still in the possession of police and security forces; such a situation could give rise to violation of regulations concerning the use of weapons by police and security forces. Regarding section II (c), the Committee would welcome additional information on the outcome of the States' investigation into complaints of torture, cruel, inhuman or degrading treatment.

9. Mr. PRADO VALLEJO asked whether the various human rights bodies in Costa Rica had the power to investigate complaints of human rights violations and take action against offenders.

10. He also sought information about what the Government had done in connection with a letter from Amnesty International concerning complaints about the detention of three politicians, two cases of extrajudicial executions, and complaints of torture and ill-treatment, and what response had been made to Amnesty International.

(Mr. Prado Vallejo)

11. He recalled that in December 1992 a report had been submitted to the Costa Rican Commission for Human Rights which had indicated, inter alia, that the judiciary was not doing anything to try to reduce the number of persons illegally detained in prisons and that there had actually been an increase in the number of illegal detentions. He asked whether the Government had done anything to investigate that situation and whether it had taken any steps to remedy it. That report had also indicated that police officers were being sent to military or paramilitary training centres; the purposes of such centres would not seem to correspond to those of a police force.

12. He had a communication from banana plantation workers in Costa Rica who alleged that they had been poisoned in the course of their work and that lawsuits had been brought against foreign companies and the Government. That situation would constitute a danger to the right to life. He asked whether the Government was doing anything about those complaints, which had been publicized at the international and national levels.

13. Mrs. CHANET recalled that in 1992, members of the rural guard had been charged with torture, ill-treatment and even extrajudicial executions, particularly against the Indian population, and that some arrests had been made; she asked what had happened subsequently, whether penalties had been imposed, or whether the individuals had been acquitted. She also asked for details about the humiliating treatment of transvestites who, it appeared, were often arrested by the police and subjected to ill-treatment.

14. At the time of the consideration of the second periodic report, there had been some uncertainty about the rules applicable to pre-trial detention; she asked for further information on those rules and on the maximum duration of such detention. She also requested information on secret detention, in the light of the Committee's general observations on article 7 of the Covenant, and in particular whether such detainees were allowed medical visits, whether lawyers were also required to maintain secrecy and whether there was a limit on the intervals between interrogations of persons held in secret detention.

15. In paragraph 192 of the report, it was indicated that in the light of judgment No. 282-90 of the Constitutional Tribunal, there was no obstacle to the exercise of the right of appeal in Costa Rican criminal procedure. However, that judgment did not cover all aspects of the right of appeal. She asked how the judgment would be implemented and how the principles embodied in it would become law.

16. She asked what follow-up there had been to the bill to amend article 474 of the Code of Criminal Procedure and establish a higher criminal court of cassation (paras. 184 and 185).

17. Mrs. EVATT said that she, too, sought information on the outcome of the charges instituted against the rural guard in connection with a drug raid in February 1992, which had been brought to the Committee's attention by Amnesty International. Amnesty International had also drawn attention to instances of lengthy detention without trial; she asked what steps were being taken to ensure that there was no repetition of such situations and to ensure that the habeas corpus rule was respected, especially in drug offenses.

(Mrs. Evatt)

18. In relation to article 9, paragraph 5 of the Covenant, she recalled that it had been indicated in paragraph 27 of the second periodic report (CCPR/C/37/Add.10) that efforts were under way to amend article 108 of the Penal Code; according to paragraph 230 of the current report there were no plans to amend the article; she asked whether anything would be done about that article.

19. With regard to article 10 of the Covenant, she recalled that at the time of the consideration of the second periodic report, representatives of Costa Rica had said that the prison system was very overcrowded. The establishment of the Office for the Protection of Prisoners was a favourable development; however, she noted in paragraph 66 that the Office did not have representatives in all penal establishments in Costa Rica. She asked how easy it was for prisoners to contact the Office and whether the overcrowding situation had been improved. She was pleased to learn of the attention paid to female prisoners (para. 68) and asked whether the conditions of female and male prisoners were equal, and what proportion of prisoners were women.

20. Mr. WENNERGREN said that, in connection with the tragic events in February 1992 involving the rural guard, he understood that there were about 3,500 members of the rural guard; he asked how they were recruited, what kind of training they received and how much training they were given in constitutional rights and human rights matters. Since so many of them had abused their power in the incident in February 1992 it seemed that they were not fully aware of their obligations to respect the human person. He asked whether their training had been improved since then or whether there were plans to improve it.

21. He understood that there were about 6,000 members of the civil guard; he asked how they were recruited and what kind of training they received. He also asked whether there were other police bodies apart from the civil and rural guard, whether there were security forces, and how the police as a whole were organized and trained. Clearly since Costa Rica had no army, the police must operate in a sense as a military force, which would imply some participation in that kind of training.

22. In connection with paragraph 51, he asked what progress had been made in humanizing prisons and whether the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners were met in Costa Rican prisons. He asked how the prison system was organized, how many prisons there were, and whether there were prisons in rural as well as urban areas. In connection with paragraph 67, he assumed that the Office for the Protection of Prisoners was functioning in prisons other than the Buen Pastor prison. He asked how the Office functioned, whether it had dealt with many complaints, and how its activities were coordinated with the activities of the Office for the Protection of Detainees in the Prison System. In connection with paragraph 68, he asked whether there were special prisons for women or for juvenile offenders.

23. He asked whether he was correct in believing that administrative cases were dealt with in ordinary courts and what Costa Rica's experience had been in such cases; he asked how many cases there had been each year and whether citizens required lawyers when appealing against administrative decisions.

24. Mr. MAVROMMATIS said that in its questions on the rules and regulations governing the use of weapons by the police and security forces, the Committee had had in mind the Havana rules; he asked whether there were any rules calling for proportionality in the use of force, progressing from negotiation to non-fatal force to firearms. He also sought information about the 1992 incident involving the rural guard. Referring to paragraph 182, which stated that, under the Code of Criminal Procedure, the accused could appeal against a sentence by a court to two or more years' imprisonment and also against a sentence by a criminal judge to a term of imprisonment of over six months, he asked what the difference was between those two provisions.

25. Noting the statement, in paragraph 186, that the obstacle to appeal constituted by article 474 had been removed by judgement No. 282-90 of the Constitutional Tribunal he said, in practice, minor details could frustrate the exercise of the right of appeal, and therefore asked whether the bill to amend article 474 of the Code of Criminal Procedure and to establish a higher criminal court of cassation (para. 185) had been promulgated. He asked whether measures were being taken to familiarize judges with the Covenant, and also why the offence of obstruction of services, referred to in paragraph 188, was subject to imprisonment.

26. Mrs. HIGGINS said that the professionalism of the police force should not depend on the existence of a standing army. She sought further information about pre-trial detention; the questions asked at the time of the consideration of the second periodic report had been answered only in terms of the conditions for bail. Information was needed on the legal regime of pre-trial detention.

27. She asked about government policy in relation to the human rights problems arising from the increase in crime and whether there would be any change in the categorization of offences that were subject to imprisonment or in prison facilities; she hoped that it was not necessary to make use of police cells.

28. The Committee had heard on a few occasions of large-scale round-ups of alleged criminals, involving several hundred people, after which only a few people had been charged or found guilty; she asked what legal regime had been followed in carrying out such round-ups and whether it was compatible with Costa Rica's legal obligations under the Covenant.

29. Mr. SEGURA (Costa Rica), replying to the question concerning alleged human rights violations by the rural guard, said that the accused guards had been arrested but were currently free on bail because they had no previous police records. While the investigations had revealed that two members of the indigenous community of Costa Rica had indeed been killed by the guards near to the Panamanian border, the report of Amnesty International had misrepresented the facts. He acknowledged, however, that the national debate sparked by the report had been extremely useful.

30. On the question of the national legislation governing the possession and use of weapons, Costa Rican law expressly prohibited possession of weapons with certain characteristics, including chemical and bacteriological weapons. The act in question also listed those weapons which could be legally owned.

(Mr. Segura, Costa Rica)

31. He explained that the Office for the Protection of Human Rights was empowered to take action ex officio whenever it deemed that the human rights of individuals had been violated.

32. Mr. TATTENBACH (Costa Rica) said that the Costa Rican Constitution of 1949 had abolished the army as a permanent institution, which meant that it could be reorganized in the event of external aggression. It would be an error, however, to think that Costa Rica lacked security forces. Every independent State needed to protect its frontiers, its airspace and its territorial sea. In Costa Rica, the civil guard fulfilled those responsibilities. The civil guard was comparable to the "carabineros" found in certain other countries, that is to say, not quite an army and somewhat more than a police force. It was different from an army in a number of important respects. It was administered by the civil authorities, who were themselves subject to parliamentary oversight, and its members were subject to civil, not military, law. Its budgetary resources were allocated in the general budget of the State and approved by the legislative authorities. It had no heavy or offensive weapons, such as tanks and warplanes, but light, defensive weapons. Moreover, its members spent their time not in barracks but in the frontier regions performing useful tasks.

33. As for the rural assistance guard, the very name of that institution reflected its civil character and its emphasis on providing assistance, particularly to rural communities. While certain members of the guard might have committed abuses, the public reaction had been overwhelmingly one of rejection of such acts.

34. On the subject of pre-trial detention, good intentions of the State were not always matched by the reality. Nevertheless, the percentage of pre-trial detainees was lower in Costa Rica than in many other countries. Indeed, laws favouring the release of accused persons before their trial were severely criticized by the public because of the danger to society which such persons sometimes represented. Finding a balance between the need to ensure public safety and the need to protect the human rights of detainees was no easy task.

35. On the subject of recruitment policies, applicants were required to have a high school diploma and must have no police record. Training in the use of light weapons was provided in a national training academy and members occasionally received scholarships for more advanced military training abroad.

36. Mr. SEGURA (Costa Rica) said that penitentiary officials received special training in the field of human rights and had attended the recent training courses and seminars organized by the Inter-American Institute of Human Rights for the police forces of the region.

37. Compensation was not normally awarded to persons who had been unjustly detained. Where an individual so detained suffered severe injury or damage, it was for the courts to determine whether compensation should be paid.

38. Efforts had been made to alleviate prison overcrowding by releasing some prisoners - those whose conduct had been good - provided that they reported each week to their respective prisons. Unfortunately, he had no information on the percentage of female prisoners in Costa Rican penitentiaries.

(Mr. Segura, Costa Rica)

39. Under Costa Rican law a person could be held incommunicado for up to 10 days if there was reason to believe that he would contact his accomplices or otherwise obstruct the investigation into the case. Nevertheless, such prisoners enjoyed certain rights, including the right to perform certain civil acts, to receive books and to be visited by a judicial inspector.

40. Mr. TATTENBACH (Costa Rica), replying to the question put by Mr. Prado Vallejo concerning the health of workers in banana plantations, said that the reports had exaggerated the situation. Nevertheless, the reproductive capacity of a number of workers appeared to have been affected by the improper use of pesticides and a claim had been filed against the plantation in question. The incident had prompted the adoption of stricter measures for the use of pesticides and had also aroused interest in the possibility of dispensing with pesticides altogether and growing "organic" bananas.

41. Mr. SEGURA (Costa Rica), replying to the question concerning the legal defense of indigent detainees, said that the Office for the Protection of Human Rights provided such detainees with the services of itinerant attorneys. In addition, since there was no military service in Costa Rica, university students were required to provide service to the State in their field of study. Accordingly, law students provided 18 months of service free of charge to detained persons who could not afford their own legal counsel.

42. While he could not give the exact number of prisons in Costa Rica, in addition to State prisons in the capital, each province had its own prison system, including special prisons for young offenders and for women. Persons arrested by rural guards were detained in the corresponding provincial prison. Finally, the Office for the Protection of Human Rights and the Ministry of Justice had instituted programmes aimed at humanizing places of detention in Costa Rica.

43. Turning to the questions on section III of the list of issues, he said that the Roman Catholic Church (sect. III (a)) did indeed have a privileged position in Costa Rica under article 75 of the Constitution, a very anachronistic provision which, however, had proven very difficult to repeal because of pressure from vested interests. The Roman Catholic Church was to receive support from the State as the State religion, without, however, impeding the free exercise of other worship that was not opposed to universal morality or good customs. Thus, the full freedom of other religions was guaranteed.

44. Mr. TATTENBACH (Costa Rica) pointed out that Costa Rica had no Concordat with the Vatican, which might actually have been much more onerous. Moreover, the country had a long tradition of separation of Church and State.

45. Mr. SEGURA (Costa Rica), responding to questions regarding telephone tapping or electronic bugging (sect. III (b) of the list of issues), said that article 221 of the Code of Criminal Procedure, dating from 1973, had on 22 November 1990 been declared unconstitutional, giving retroactive right of redress to any victim. The provision, which allowed court-ordered wire-tapping, had been found to violate article 24 of the Constitution, which stated that the private documents and written or oral communications of inhabitants of the Republic were inviolable.

(Mr. Segura, Costa Rica)

46. Currently, there were two bills before the Legislative Assembly, one a draft law regulating wire-tapping and the other a draft law on wire-tapping and the seizure and examination of private documents. The latter bill, a follow-up to the revision of article 24 of the Constitution that now allowed evidence obtained through wire-tapping to be used in the courts, had been drafted to replace the 1973 provision recently struck down. The bill regulated the types of offences in respect of which wire-tapping and interception of documents were permissible, the length of time such wire-tapping was acceptable and the responsibilities of officials in charge of the use and control of such procedures. It classified offences according to the threat they posed to the public good, and their social, economic and political repercussions, and the difficulty of using other means to verify their commission. A Wire-Tapping Centre was to be set up to allow the courts to use wire-tapping as an effective means of investigation. The bill also proposed amending article 198 of the Penal Code to allow bugging of direct conversations, except those between an accused and his defence lawyer, and except in the inviolable location of the home unless it was suspected that a crime was in progress. The bill also regulated the seizure and examination of private documents for use as evidence in court and it balanced the individual and the public interest by allowing complaints to be brought by those affected. It should be noted that the draft law was still just that, and that there was great opposition to it in the Legislative Assembly. As to the availability of the relevant technology in Costa Rica, all aspects of the Internet system were in place and it was in fact able to record telephone conversations, faxes and the like.

47. With regard to the rights of minorities (sect. III (c) of the list of issues), he said that no further response was needed beyond what he had said in his general introduction, because Costa Rica had recently reported in detail on that question to the Committee on the Elimination of Racial Discrimination (CERD).

48. Regarding the representation of minorities in the Government (sect. III (d) of the list of issues), he said that of the 57 members of the Legislative Assembly none were indigenous and none were blacks. In the executive branch, 4 of the 34 members were women and 1 was black. It was difficult for Costa Rica to achieve proper representation of minorities.

49. Mr. PRADO VALLEJO said that the requirement that a Roman Catholic bishop must approve the teaching of religion would obviously favour that faith, and he wondered whether there was any plan to do away with that regulation.

50. Mrs. EVATT, referring to the freedom of association under article 22 of the Covenant, observed that the International Labour Organization (ILO) had recently criticized the Solidarista associations in Costa Rica as unrepresentative of workers because they had been set up by employers; it had further found evidence of anti-trade-union discrimination in the country, and unequal treatment of employers' associations and trade unions. There seemed to be penalties on union organizers which impinged on the very important right of association, and it was disturbing that there was no protection of the right of agricultural workers, especially in the sugar and coffee plantations, and of other vulnerable groups, to organize. Practices such as regular firing and rehiring at lower wages, and the blacklisting of those who tried to stand up for workers' rights, seemed to

(Mrs. Evatt)

be commonplace. Costa Rica had been asked by ILO to pass legislation to guarantee the workers' right to hold meetings in the workplace and she wondered whether any such legislation had been adopted. Apparently, Labour Ministry officials conspired regularly with landowners to have workers paid less than the minimum wage and work overly long hours under bad conditions - all factors that undermined the right of association. Since fear would obviously keep any individual from taking action, she wondered what redress was available collectively to workers in Costa Rica, and whether the Government planned to inquire into the situation and take appropriate action. Costa Rica's human rights record was so outstanding that such an issue should not be allowed to detract from it.

51. Mr. HERNDL asked whether the Government actively supported the Solidarista associations, which were given a distinct advantage by the legislation of 1984 since trade unions could be set up only in companies with 20 or more workers and most firms were smaller. Such favouritism militated against the right of collective bargaining and, indeed, there had been a 1992 complaint to ILO regarding legislative restriction of collective bargaining in Costa Rica.

52. With regard to article 27, he pointed out that when the Covenant referred to minorities it meant ethnic, linguistic or religious minorities, not women. The third periodic report was vague and confusing on that point, even though the Committee had expressed concern at the time it had considered Costa Rica's second periodic report and had requested detailed information on the protection of minorities. It would be useful to know what the Office for the Protection of Human Rights was doing for minorities. Paragraph 19 of the report spoke of a bill replacing the Costa Rican Institute for Indigenous Affairs and amending the Indigenous Peoples Act, and he would like more information on why that was needed. He also would like to know what the recently established advisory board to the Office for the Protection of Human Rights (para. 23 of the report) would be doing on behalf of the indigenous population; and what kind of support (para. 26 of the report) was being contemplated for the indigenous population.

53. Mr. MAVROMMATIS said that the International Confederation of Free Trade Unions (ICFTU) had provided disturbing but reliable information regarding the Solidarista associations in Costa Rica. It was a regional phenomenon that seriously affected trade unionism by militating against collective bargaining and facilitating arbitrary dismissals and similar practices. It eroded efforts towards social justice in Costa Rica and he urged the Government and the newly established human rights bodies to look into it as soon as possible.

54. Mr. WENNERGREN observed that Costa Rica, apparently aware of the far-reaching violations of trade union rights in the country, had asked ILO for assistance in revising its outdated labour law on trade unions, and he wondered if it was in fact being reformed to bring it up to international standards.

55. With regard to freedom of religion, he believed that article 75 of the Constitution, which guaranteed the free exercise of "worship that is not opposed to universal morality or good customs", was not in accordance with the Covenant article 18 (3) of which referred only to limitations on the ground of "morals" and not custom. The term "worship" in the Costa Rican Constitution was ambiguous and might be in violation of article 18 (1) of the Covenant.

56. Mrs. HIGGINS asked, on the broader issues relating to freedom of association, whether trade union activities were permitted in the public sector and, if so, in which sectors workers were allowed to strike. An overall ban on striking would be too broad because not all were critical sectors. She also wondered what legal protection there was for collective bargaining and whether dismissal for forming or joining a trade union was forbidden by law.

57. It had disturbed her to hear the representative of Costa Rica state that he had deliberately decided not to answer a specific question in section III (c) of the list of issues because it would repeat what Costa Rica had reported to another human rights body.

58. Mr. BRUNI CELLI said, regarding article 26, that Costa Rica had a sizable group of foreign refugees who had originally fled the war in Nicaragua but had now become, as it were, economic refugees. He would like information on their numbers, their working conditions and salaries, the nationality of their children, and the kind of police protection afforded them.

The meeting rose at 6.10 p.m.

UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1300
11 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

FIftieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1300th MEETING

Held at Headquarters, New York,
on Friday, 25 March 1994, at 10 a.m.

Chairman: Mr. ANDO

CONTENTS

Solemn declaration by a newly elected member of the Committee in accordance with article 38 of the Covenant

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Costa Rica (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1300/Add.1.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference Services, room DC2-794, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.25 a.m.

SOLEMN DECLARATION BY A NEWLY ELECTED MEMBER OF THE COMMITTEE IN ACCORDANCE WITH ARTICLE 38 OF THE COVENANT

1. Mr. Ban solemnly undertook to discharge his duties as a member of the Human Rights Committee impartially and conscientiously.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Costa Rica (continued) (CCPR/C/70/Add.4)

2. At the invitation of the Chairman, Mr. Segura and Mr. Tattenbach (Costa Rica) took places at the Committee table.

3. Mr. TATTENBACH (Costa Rica), replying to questions on the relationship between the trade unions and the Solidarista associations in Costa Rica, said that, although he understood the concern of trade unionists at what they regarded as the threat to their interests posed by the Solidarista movement, that movement in fact existed in a completely different sphere from that of trade-union activity. The Solidarista associations attempted to create a sense of solidarity between business and labour by associating workers with the enterprises that employed them. Although they might have the effect of impeding the expansion of trade unions, particularly in the case of large agricultural undertakings, the Government could not restrict the movement, because it felt that that would be an infringement of the right of association. Nevertheless, the activities of the associations were limited by law; they could not, for example, bargain collectively or be represented on official governmental bodies dealing with labour questions, and the right to strike was guaranteed.

4. Mr. SEGURA (Costa Rica), replying to other questions raised by members of the Committee with regard to labour, said that Costa Rica had amended its labour legislation in November 1993, and ILO, after a careful examination, had found the new legislation to be in line with its norms. Answering a question regarding the right to strike, he said that article 61 of the Costa Rican Constitution guaranteed the right to strike except in certain limited cases in which strikes would be against the public interest; article 62 provided that collective labour agreements had the force of law. The conditions for the employment of temporary labour were stringently regulated by the Government. Although abuses did occur in that area, the Government carried out regular and frequent inspections of the working conditions of such labourers.

5. With regard to the treatment of aliens, he noted that larger numbers of refugees and asylum-seekers had entered Costa Rica from other Central American countries during the 1980s, and that they had often belonged to the most disadvantaged parts of the population of those countries. Costa Rica treated those aliens in accordance with the international norms regulating the treatment of refugees and asylum-seekers, and there were constitutional provisions stipulating that they had the same individual and social rights as citizens, although they could not interfere in political matters. The Government, with

(Mr. Segura, Costa Rica)

the help of a number of international organizations, had taken a series of measures intended to help integrate them into the life of the country.

6. On the question of the equality of women, he said that equal rights for women were guaranteed, by law and with Costa Rica's ratification of the Convention on the Elimination of All Forms of Discrimination against Women, legislation had been passed to eliminate such discrimination. It was true, however, that, for historical and cultural reasons, the participation of women in government remained disproportionately low.

7. Replying to questions on the treatment of minorities, he noted that legislation was currently pending to reform the treatment of the disabled in Costa Rica. He rejected any implication that Costa Rica was hiding or withholding information with respect to the treatment of the indigenous population. It was his Government's policy not to repeat information supplied to one United Nations body in other forums, and Costa Rica had submitted an extensive report to the Committee on the Elimination of Racial Discrimination in 1993. With regard to religious discrimination, it was true that the Catholic Church was given preference by the law in the matter of providing religious instruction in schools, but those who did not wish to have such instruction were free not to attend. Moreover, children were taught about other major religions, and efforts were being made to increase the availability to children of information about other religions. In response to a question about the protection of the elderly, he said that, although Costa Rica's population was predominantly young, programmes to protect the elderly had recently been initiated. Because of the nature of Costa Rican society, it was difficult for the Government to deal effectively with the problems of the elderly.

8. Mr. PRADO VALLEJO said he thought that the dialogue between the Human Rights Committee and the representatives of Costa Rica had been constructive, even though some of the Committee's questions remained unanswered. Costa Rica had made great and largely successful efforts to establish a democratic society in which human rights were respected; he wished to emphasize, however, that it remained important to investigate and take action on complaints, especially in the area of religious discrimination. In that connection, he had been glad to hear the Costa Rican representative say that article 75 of the Constitution, which established preferential treatment for the Catholic religion, was somewhat obsolete, and to hear about the availability of other options in the matter of religious instruction. It would be a great victory for Costa Rica to achieve complete freedom of religion.

9. Mr. HERNDL said he felt that there had been an interesting and important exchange of views between the Committee and the representatives of Costa Rica, and it must be acknowledged that the report under discussion was from a State party known for its devotion to human rights, both internationally and within its own country. Nevertheless, he considered that some confusion still remained with regard to the human rights situation in Costa Rica, for example in connection with the situation referred to in paragraph 175 of the report (CCPR/C/70/Add.4).

(Mr. Herndl)

10. The Committee's only real problem had been with the incomplete nature of the report. In that connection, he noted that the first and second reports had been criticized on the same grounds. He was surprised that the Costa Rican Government should again have submitted a report in which the specific criticisms made in earlier years had not been taken into account, and he hoped that the next report would be an improvement in that respect. He noted that the Centre for Human Rights offered assistance and training in the preparation of such reports.

11. Mr. BRUNI CELLI welcomed the positive dialogue with the Costa Rican delegation, which had provided more information than the report. He urged the Government of Costa Rica to take into account the Committee's comments and to consult the guidelines for the preparation of reports to ensure that its next report would be acceptable, with the ultimate goal of making the application of the Covenant more effective. The Government should also follow the Committee's recommendation that the report should be disseminated to the public and to human rights organizations. Contributions from non-governmental organizations would be welcome, since the current report presented only the government point of view.

12. Nevertheless, the information that the Legislative Assembly would soon review the Second Optional Protocol with a view to its ratification was encouraging, as was the information provided both orally and in the report on the constitutional status of international instruments. Costa Rica's institutional development in the area of human rights, as evidenced most recently by the establishment of the General Office for the Protection of Human Rights and the Office for the Protection of Citizens, was an excellent achievement.

13. Mrs. CHANET said that the Committee rarely encountered problems of communication with a country where respect for human rights was as well developed as in Costa Rica. Thus, it was even more regrettable that Costa Rica had not used the opportunity presented by the submission of the report to highlight its achievements in the field. There had been an apparent misunderstanding regarding the reporting obligations of States parties to the Covenant.

14. The answers to her questions on the right of appeal had not been specific. Furthermore, regarding minorities, article 27 of the Covenant dealt with positive protection for such groups rather than non-discrimination. In any case, a reference to the reports already submitted to the Committee on the Elimination of Racial Discrimination was not an adequate response. She recommended that the fourth periodic report should be drafted by lawyers specializing in human rights areas. It should be disseminated to the news media and non-governmental organizations before its submission to the Committee. Ideally, non-governmental organizations should participate in its drafting.

15. Mr. LALLAH recalled that the second periodic report had also been unsatisfactory and had not allowed for a systematic discussion by the Committee. Unfortunately, the misperceptions as to the duties of Costa Rica under article 40 of the Covenant had apparently continued. He requested the delegation to convey in the strongest terms to the Costa Rican authorities that the fourth periodic report must follow the Committee's guidelines. In his view, Costa Rica was not necessarily in a disadvantaged position, since smaller and poorer countries still were able to submit well-written reports.

16. Mr. WENNERGREN said that, although the members of the delegation had made commendable efforts to answer the Committee's questions, the dialogue had not been as fruitful as expected, because the report was unsatisfactory. The Committee was an independent body, and it should be stressed that it was not acceptable to refer to reports provided to other committees in answer to its queries.

17. His remaining concerns lay in the areas of labour legislation and freedom of religion. Labour legislation in Costa Rica appeared to be less advanced than other types and not in conformity with ILO requirements. He had not received an answer concerning possible redrafting of the labour laws. Regarding freedom of religion, article 75 of the Constitution seemed to limit freedom of religion on grounds unacceptable under article 18 of the Covenant.

18. Mrs. HIGGINS said that, in her experience, States often complied meticulously with their reporting obligations under the Covenant, while their true performance in protecting human rights left much to be desired. It was unusual to encounter a situation such as Costa Rica's, where respect for human rights was exemplary but the reporting obligations had not been fulfilled. Eternal vigilance was necessary, since the human rights situation in a given country was never static. The Committee's role was to encourage those States whose human rights situation was less secure, and to monitor the impact of such external factors as an adverse economic climate on the implementation of the Covenant. She was disappointed that she had received no reply to her specific questions on trade unions, pre-trial detention, articles 9 and 10, and the professionalism of the police. Even if some overlap existed with reports supplied to another treaty body, Costa Rica's duty to report to the Committee still remained. Nor was its failure to report exonerated by its support to the Commission on Human Rights and other United Nations activities in the field.

19. Mrs. EVATT said she had already expressed her disappointment that the report had not made use of the information available on measures taken since the previous report and progress made in areas of concern. The information given orally was certainly valuable, but could not substitute for an adequate written report.

20. It was encouraging to note that the constitutional and legal framework and the remedies available appeared to be very much in keeping with the Covenant, and that Costa Rica had diverted significant resources away from maintaining a standing army. In her view, however, several areas of concern remained. For example, workers in small agricultural enterprises were effectively denied the right to organize, through dismissal and blacklisting. Such workers appeared to fall outside any form of protection for their rights. She was still anxious to

(Mrs. Evatt)

learn whether any mechanism to protect the rights of such workers existed. In the area of gender equality, Costa Rica had passed excellent laws, but she would welcome more information on how they were implemented in practice. Another area of concern was the lengthy delay in bringing cases to trial resulting in long periods of pre-trial detention and some reports of abuse of detainees.

21. Non-governmental organizations and the rational community in general should be encouraged to participate in the preparation of future reports.

22. Mr. MAVROMMATIS said that the deficiencies in the report, together with the lack of specificity in the replies to some of the questions raised, had made it difficult for the Committee to evaluate the information provided. The next periodic report would be due in a year's time, and he urged the delegation to insist that the Government should not only follow the guidelines for its preparation, but should also provide the details that were missing from the current report.

23. He had the impression that the Covenant ranked low in the Government's estimation, although he doubted that that was indeed the case. He endorsed the comments made by previous speakers concerning the delegation's assertion that it did not need to reply to certain questions, as the answers could be found in the reports submitted to other treaty bodies. In ratifying the Covenant, the Government had undertaken to give an account of its efforts to implement each and every article, regardless of whether a similar provision was to be found in other instruments. It might be advisable for the delegation to include persons who would take note of the specific questions raised and transmit them to the authorities.

24. With regard to the Solidarista associations, it was encouraging that the Government did not intend to permit the situation to deteriorate to the point where it might affect tripartite cooperation within the country, industrial peace or social justice; nevertheless that danger persisted. As the issue was evolving into a regional phenomenon, affecting at least four countries, it was to be hoped that the Government would monitor the situation closely with a view to preserving trade-union rights.

25. Mr. FRANCIS said that the Committee was in agreement on several matters, namely, the Government's satisfactory compliance with its obligations under the Covenant; the Government's failure to comply, in respect of both form and content, with the Committee's guidelines for the preparation of reports; and the comment made by Mrs. Higgins regarding the delegation's statement that the answers to some questions could be found in reports submitted to other United Nations bodies. He strongly hoped that full compliance would be achieved in the fourth periodic report.

26. With regard to the guarantees of protection of detainees, as referred to in paragraph 51 of the report, it was precisely those types of issues that required further elaboration. For instance, it would be useful for the Committee to know how many police officers had been punished for breaking the rules.

27. Mr. NDIAYE endorsed the comments made by the preceding speakers. The Government's silence on particular questions was all the more regrettable as it was those issues that were of greatest concern to the Committee. While it was true that section III (c) and (e) of the list of issues had been formulated in very general terms, the Committee had been unable to do otherwise in the absence of more specific information. The Committee still did not know what steps had been taken for the advancement of the minority group of African descent, which, according to the report, constituted 5 per cent of the population. The Government merited criticism for not having publicized the report.

28. Mr. SADI stressed that, in future, the delegation should include those responsible for preparing the report, as they were the only ones who could supplement the information provided. While he had no doubt that the human rights situation in the country was basically good, the problem for the Government was how to meet its treaty obligations under the Covenant.

29. The CHAIRMAN said that full details should be provided in the next report on such issues as equality of the sexes, pre-trial detention and the treatment of detainees, and the treatment of minorities. In addition, the Government should inform the public of the Committee's response to the report.

30. Mr. TATTENBACH (Costa Rica) said that he deeply regretted the deficiencies in the report and his Government's failure to address the criticisms made by the Committee during its consideration of the previous report. He would convey all of the Committee's comments to his Government and would ensure that the next report was prepared in accordance with the requirements. He appreciated the Committee's recognition that the substance of the report was generally acceptable, and hoped that the members would understand that his country, like others in the region, suffered from problems of bureaucratic inertia that made it difficult to effect changes.

31. Mr. SEGURA (Costa Rica) stressed his Government's desire to cooperate with the Committee and to strengthen the country's human rights protection mechanisms.

32. The CHAIRMAN said that the Committee had concluded its consideration of the third periodic report of Costa Rica. He urged the Government to submit its fourth periodic report in a timely manner.

The meeting rose at 12.15 p.m.

UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1301
12 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1301st MEETING

Held at Headquarters, New York,
on Friday, 25 March 1994, at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Draft general comment on article 27 of the Covenant (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 27 of the Covenant (continued) (CCPR/C/49/CRP.1 and CCPR/C/50/CRP.1)

1. The CHAIRMAN said that document CCPR/C/50/CRP.1 contained amended paragraphs 1 to 6.1 of the draft general comment on article 27 of the Covenant, which the Committee had adopted at its 1294th and 1295th meetings. He then invited members to consider paragraph 6.2, as redrafted by Mrs. Evatt and Mr. Pocar, and paragraphs 7 and 8, which were contained in document CCPR/C/49/CRP.1.

Paragraph 6.2

2. Mr. LALLAH noted that the first sentence stated that the individual rights protected under article 27 depended to some extent on the ability of the minority or group to maintain its culture, language or religion. He suggested deleting the phrase "to some extent".

3. Mr. EL-SHAFEI objected that the burden would thus be put entirely on the minority itself, whereas the language of article 27 was very clear on the question of protection.

4. Mrs. HIGGINS suggested that the phrase "to some extent" might be replaced by the phrase "in turn" to accommodate Mr. El-Shafei's point.

5. It was so decided.

6. Mr. AGUILAR proposed replacing the phrase "minority or group" by the words "minority group".

7. Mr. LALLAH, referring to the second sentence, which read "Positive measures by States may also be necessary to protect the identity of a minority in order to enable persons belonging to it to freely express their characteristics and to develop their culture, language or religion, in community with the other members of the group", proposed replacing the clause "to freely express ... religion" by the clause "to enjoy and develop their culture and language and to practise their religion".

8. Mr. WENNERGREN said that he disliked the vague term "identity" and would [illegible] with the word "characteristics".

[illegible]NDL said that he preferred "identity". He also proposed prefacing [illegible] sentence with the word "Accordingly,".

10. Mr. EL-SHAFEI suggested the word "rights" in place of the word "identity".

11. Mr. LALLAH said that introducing the issue of rights would break the logic of the sentence.

/...

12. Mrs. EVATT concurred with Mr. Lallah, but suggested replacing the clause "in order to enable persons belonging to it" with the phrase "and the rights of its members".

13. Mr. AGUILAR observed that a group's characteristics made up an identity which, for the purposes of article 27, had been defined in terms of its culture, religion and language, and which conferred the necessary specificity on the group. The word "identity" should therefore be retained.

14. It was so decided.

15. The CHAIRMAN said he took it that the Committee wished to adopt the first and second sentences of paragraph 6.2 as just amended and to adopt the third and fourth sentences of the draft submitted by Mrs. Evatt and Mr. Pocar, which read:

> "In this connection, it has to be observed that such positive measures must respect the provisions of articles 2 (1) and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria."

16. Paragraph 6.2, as amended, was adopted.

Paragraph 7

17. Mrs. HIGGINS said that since culture did not always include a particular way of life, the first sentence should be amended to read "may include".

18. Mr. EL-SHAFEI said that paragraph 7, which defined the nature of the cultural rights protected by article 27, would prove very useful in dealing with communications. However, he wondered whether only land and land resources were associated with a certain pattern of life, and whether traditional activities could be restricted to fishing and hunting.

19. Mr. HERNDL said that the words "that right" in the last sentence should be replaced by the words "those rights" because the reference was to cultural rights in general.

20. Mrs. EVATT, supported by Mr. HERNDL, said she was concerned that minorities should be consulted about decisions which affected them. She therefore proposed adding the phrase "and measures to ensure the effective participation of members of the minority group in decisions affecting them." at the end of the paragraph.

21. Mr. LALLAH suggested that Mrs. Higgins and Mr. El-Shafei's concerns might be accommodated by replacing the clause "it is to be noted ... land resources," with the words "the Committee observes that culture may manifest itself in various forms and may include a particular way of life associated with the use of land resources,". In the second sentence, the phrase "activities of fishing and hunting" should read "activities such as fishing and hunting".

(Mr. Lallah)

22. He also approved of Mr. Herndl's correction and warmly supported Mrs. Evatt's proposed addition, which reflected the Committee's experience in dealing with article 27. In the Omaniyak and Kitok cases referred to in the footnote to paragraph 7, the Governments had, indeed, had extensive consultations with the groups concerned, which had proved very useful.

New paragraph (former paragraph 5.4)

23. Mr. LALLAH recalled that paragraph 5.4 had been deleted except for the last sentence, which was to be placed elsewhere in the draft text. He proposed including that sentence after paragraph 7 as a new paragraph reading: "The Committee observes that none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant. 5/" He assumed that the footnote to that paragraph, like the various other footnotes referring to specific cases, would be retained since it enabled States parties and non-governmental organizations to follow the Committee's reasoning.

24. The CHAIRMAN said he took it that the Committee wished to retain all footnotes and to adopt the new paragraph just proposed, for inclusion placing it after paragraph 7.

25. It was so decided.

Paragraph 8

26. Mr. LALLAH said that paragraph 8 stressed that the rights referred to in article 27 were valuable rights in themselves, a point that was often forgotten when the issue of non-discrimination was introduced. The paragraph had been placed at the end of the draft general comment to emphasize that idea.

27. Mrs. CHANET said she shared Mr. Lallah's views and stressed that paragraph 8 should emphasize that those rights should be respected in themselves and not confused with other individual rights. She proposed that the phrase "nevertheless these are valuable rights" should be replaced by "these rights must be guaranteed as such and must not be confused with other individual rights which are already ensured to all individuals". The second and third sentences should be deleted, as they contained unnecessary additional references to cultural identity and weakened the central idea of the paragraph.

28. Mr. SADI proposed that the words "limited nature and scope" should be replaced by the words "specific scope", a more neutral expression that did not have the negative connotation that the word "limited" had. The phrase "limited range of subject areas", should be replaced by the words "particular range of subject areas" for the same reason. He also felt that the phrase "the protection of these rights" should read "the promotion and protection of these rights", in order to emphasize the positive measures to be adopted to promote those rights. Lastly, in the third sentence, the word "special" should be replaced by the word "particular" and the word "already" should be deleted.

29. Mr. NDIAYE said that he objected to the style of paragraph 8 and favoured simplifying the text. Specifically, as the scope of the rights in question had been sufficiently defined in preceding paragraphs, repeated references to the "limited scope" should be deleted. He supported the amendment proposed by Mrs. Chanet.

30. Mrs. HIGGINS said that, to allay States' fears with regard to the granting of minority rights, the first sentence should be amended to read: "Notwithstanding the restricted nature and scope of the rights conferred on the individual by article 27, whether in terms of the specific categories of minority groups to which he belongs or of the particular range of subject areas protected or the protection of those rights only when exercised within the minority groups concerned or else the nature of the obligations on States parties, these are none the less valuable rights." The second sentence might be amended to begin "They enrich the fabric of society as a whole," with Mrs. Chanet's amendment inserted immediately thereafter.

31. Mr. HERNDL supported the proposals made by Mrs. Higgins and Mrs. Chanet: the paragraph should emphasize that the rights in question should be protected as such.

32. Mr. WENNERGREN supported the amendment proposed by Mrs. Higgins but suggested that the word "valuable" in the first sentence should be replaced by the word "important" in order to strengthen the meaning. The third sentence should be reworded to clarify that, while some of the rights referred to in the paragraph were parallel to rights mentioned in other articles (such as the freedom of religion in article 18), they were none the less specific rights in themselves.

33. Mr. EL-SHAFEI said that the word "nevertheless" at the end of the first sentence should be deleted so that the paragraph clearly stated that "these are significant rights". The third sentence was confusing; deleting it entirely might improve the paragraph. The final sentence emphasized the essence of the paragraph and should therefore be moved to the beginning of the paragraph, introduced by the words "The Committee, in its reading of article 27, requests that States parties ..." for clearer emphasis.

34. Mr. SADI objected to the use of the word "restricted", as he did not believe that the Committee viewed the rights conferred on minorities as restricted rights. If anything, the rights of minorities were additional rights, over and above other individual rights. A more neutral word should be found to replace "restricted". In addition, the word "he" in the first sentence should be replaced by the words "he or she" to make it clear that it referred to both men and women.

35. Mr. HERNDL suggested that the words "nevertheless" and "valuable" should be deleted from the final clause of the first sentence, which would then be amended to read: "these are valid distinct rights".

36. Mr. LALLAH said that the amendments proposed by Mrs. Higgins and Mrs. Chanet would cover the points made by other members. He supported Mr. Herndl's amended version of the end of the first sentence.

37. Mr. NDIAYE supported the amendments put forth by Mrs. Chanet and Mr. Sadi and proposed that the first sentence should be further amended to specify that the rights in question related to particular categories of persons, and precise subject areas (culture, religion and language), that they were protected only when exercised within the minority groups concerned and that they imposed specific obligations on States parties.

The meeting was suspended at 4.30 p.m. and resumed at 4.40 p.m.

38. Mr. LALLAH said that he had incorporated the amendments proposed by Mrs. Chanet, Mr. El-Shafei, Mrs. Higgins, Mr. Ndiaye and Mr. Wennergren, into a revised text of paragraph 8, which read:

> "Notwithstanding the nature and scope of the rights conferred on individuals under article 27 of the Covenant, these rights are important and distinct. These rights relate to particular categories of groups of persons. They concern precise subject areas, that is to say, culture, religion and language. They are protected only when exercised within the minority groups concerned. They impose specific obligations on States parties. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights ensured to one and all under the Covenant. States parties should, therefore, ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end."

39. The CHAIRMAN said that if he heard no further comments he would take it that the Committee wished to adopt paragraph 8 as amended.

40. It was so decided.

41. Mrs. CHANET drew attention to the fact that the French version of document CCPR/C/50/CRP.1 did not contain all the amendments adopted previously and asked that a document containing all amendments adopted to date should be circulated to the Committee.

42. The CHAIRMAN said that the Secretariat would produce fully amended documents in all languages.

The meeting rose at 4.45 p.m.